

ORIGINAL

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Attorneys for Plaintiff  
JONAS ROWE

UNITED STATES DISTRICT COURT

Seaman's case, Collect Clerk's  
fee before termination pursuant  
to 28 USC 1916.

NORTHERN DISTRICT OF CALIFORNIA

JONAS ROWE, an individual,

Plaintiff,

Plaintiff,

vs.

HORNBLOWER FLEET, its engines,  
tackle, equipment, furnishings, and  
machinery, *in rem*, HORNBLOWER  
CRUISES AND EVENTS, a business entity  
of unknown form, *in personam*,

Defendants.

SEAMAN'S COMPLAINT IN  
ADMIRALTY AND AT LAW FOR  
DAMAGES FOR NEGLIGENCE  
AND UNSEAWORTHINESS,

DEMAND FOR JURY TRIAL

PLAINTIFF HEREBY DEMANDS  
A TRIAL BY JURY ON  
SUPPLEMENTAL STATE LAW  
CLAIMS  
LOCAL RULE 3-6

WITHOUT PRE-PAYMENT OF  
COSTS  
28 U.S.C. §1916

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOW COMES PLAINTIFF, JONAS ROWE AND ALLEGES AS FOLLOWS:

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COMPLAINT

1

Case No.

**JURISDICTION**

1. This Court has jurisdiction pursuant to the general maritime law, 28 U.S.C. §1333 and has jurisdiction pursuant to the Jones Act, 46 U.S.C. §30104.

2. This Court has additional jurisdiction pursuant to 28 U.S.C. § 1367, in that they arise from the same common nucleus of operative facts and same transaction, occurrence or series of transactions and occurrences.

3. Venue in the Northern District is proper pursuant to the provisions of 28 U.S.C. Sec. 1391(b), as it is the judicial district in which these claims arose.

4. Plaintiff JONAS ROWE (hereinafter "Rowe" or "plaintiff") is a citizen of the United States, a resident of the State of California, and at all relevant times mentioned herein employed as a port engineer and a seaman doing seaman's duties. Plaintiff elects to take advantage of the provisions of 28 U.S.C. §1916 and to proceed herein without prepayment of costs or fees, and without security therefore.

5. Defendant vessels, the HORNBLOWER FLEET (hereinafter "Hornblower Fleet") were and now are United States documented motor and/or passenger vessels, and are now or will come within the jurisdictional boundaries of this honorable Court.

6. Plaintiff is informed and believes and thereon alleges that defendant HORNBLOWER CRUISES AND EVENTS (hereinafter "HORNBLOWER") is a business entity based out of California, and doing business in the State of California, that provides cruise services and hosts private events aboard cruise lines as fully set out in their website, and the employer of plaintiff at all relevant times mentioned herein. Plaintiff is informed and believes and thereon alleges that HORNBLOWER was and is the owner of the Hornblower Fleet.

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**FACTUAL ALLEGATIONS**

7. On or around October 18, 2008 while working at the Port of San Francisco for HORNBLOWER, Plaintiff was working to maintain and repair vessels regularly used by HORNBLOWER for public and private events.

8. On or around October 18, 2008, while working as a Port Engineer, assigned on HORNBLOWER vessels, Rowe was ordered to move a 600 lb maritime transformer by himself so that it could be replaced. Rowe pushed the transformer forward with his shoulder, causing damage to the discs in his back.

9. Rowe injured his back and other areas of his body as a result of his attempt to move the transformer. Rowe had disc surgery for his lower back, but also suffered nerve damage to his right foot and leg. Rowe also suffered anxiety, mental suffering, and extreme emotional distress.

10. As a result of the injury, Rowe was unable to perform some of his ordinary job duties. After leaving the vessel, Rowe sought and received medical treatment, including surgery and physical therapy, for his injuries.

**FIRST CAUSE OF ACTION****JONES ACT NEGLIGENCE**

11. Plaintiff realleges and incorporates by reference paragraphs 1 through 10 hereinabove as though set forth fully below.

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1           12. Plaintiff's accident occurred, and plaintiff sustained injuries and damages, as  
 2 a proximate result of the negligence of the defendant and the defendant through its servants,  
 3 agents, workmen, and employees in that among other things:

4           a. Defendants negligently failed to provide plaintiff with a reasonably  
 5 safe place to work;

6           b. Defendants failed to keep and maintain the vessels and their  
 7 equipment and appurtenances in a proper and safe condition.

8           c. Defendants negligently failed to provide plaintiff with adequate and  
 9 proper assistance aboard the vessels;

10           d. Defendants failed to provide fit, suitable, safe and adequate working  
 11 surfaces with which plaintiff could perform his tasks aboard such vessels with reasonable  
 12 safety.

13           e. Defendants negligently failed to take proper precautions to provide  
 14 safeguards to prevent injury and damage to Plaintiff, thereby rendering the ships  
 15 unseaworthy; and

16           f. Defendants failed to provide adequate crewmembers to perform the  
 17 assign tasks.

18           13. By reason of the negligence of defendants, plaintiff sustained severe,  
 19 permanent and disabling injuries, including but not limited to his back and other areas of his  
 20 body. Plaintiff has suffered anxiety and emotional distress from his injuries. Plaintiff has  
 21 suffered other leg injuries, the extent of which has not yet been fully determined.

22           14. As a direct and proximate result of the defendants' negligence, and of the  
 23 injuries he suffered, plaintiff has been disabled from working at his usual occupation, and  
 24 has lost wages and earnings thereby; plaintiff will in the future suffer lost wages and has

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1 sustained an impairment of his earning capacity; plaintiff has in the past required and will in  
 2 the future require medical treatment, care and attention; plaintiff has in the past been, and  
 3 will in the future be, obligated to expend monies and incur obligations for medical care and  
 4 attention; plaintiff has in the past and will in the future continue to be disabled from  
 5 performing his usual duties, occupations, and avocations.

6  
 7 15. By reason of the aforementioned negligence of defendants, plaintiff has  
 8 suffered general damages in an amount according to proof.

9  
 10 **SECOND CAUSE OF ACTION**

11 **UNSEAWORTHINESS UNDER THE GENERAL MARITIME LAW**

12 16. Plaintiff realleges and incorporates by reference paragraphs 1 through 15  
 13 hereinabove as though set forth fully below.

14 17. Defendants, by their agents, servants and/or employees, were negligent and  
 15 the vessels unseaworthy in:

- 16 a. Failing to provide plaintiff with a reasonably safe place to work;
- 17 b. Failing to keep and maintain the vessels and their equipment and  
 18 appurtenances in a proper and safe condition;
- 19 c. Failing to provide adequate supervision;
- 20 d. Failing to provide proper and adequate crew for the job(s) in  
 21 question;
- 22 e. Failing to provide sufficient crewmembers to complete the job(s) in  
 23 question;
- 24 f. Failing to provide the necessary and proper equipment to perform the  
 25 duties required of plaintiff;
- 26
- 27
- 28

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1                   g.       The vessels were unseaworthy due to the unsafe nature of their  
2 equipment;

3                   h.       Failing to render prompt, adequate and proper medical treatment,  
4 including the initial medical treatment;

5                   i.       Such other conditions of unseaworthiness that were additional  
6 substantial factors in causing plaintiff's injuries, including but not limited to insufficient and  
7 inadequate equipment, supplies, and unsafe method of operation;

8                   j.       The fleet owner, knowing that certain activity would take place, had  
9 the absolute duty of furnishing equipment and manpower as would enable that activity to be  
10 done in reasonable safety;

11                   k.       Failing to warn plaintiff of the aforementioned dangerous and  
12 defective conditions;

13                   l.       Failing to use due care under the circumstances; and

14                   18.       Solely by reason of the negligence of the defendants and the  
15 unseaworthiness of the vessels, plaintiff sustained severe, permanent and disabling injuries,  
16 including but not limited to his back and other areas of his body. Plaintiff has suffered  
17 anxiety and emotional distress from his injuries. Plaintiff has suffered other injuries, the  
18 extent of which has not yet been fully determined.

19                   19.       Solely by reason of the negligence of the defendants and the unseaworthiness  
20 of the vessels, plaintiff has and may in the future be unable to assume his usual duties,  
21 occupations and vocations.

22                   20.       Solely by reason of the negligence of the defendants and/or the  
23 unseaworthiness of the vessels, plaintiff has required and may in the future require medical  
24 care, surgical care and hospital care and has incurred and may in the future incur expenses

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1 for medicines, hospital and medical care to attend to, treat and attempt to alleviate and/or  
 2 cure his conditions.

3 21. Solely by reason of the negligence of the defendants and/or the  
 4 unseaworthiness of the vessels, plaintiff has suffered injuries which have precluded him and  
 5 may in the future preclude him from fully enjoying the ordinary pleasures of life, and  
 6 participating in his ordinary activities and vocations; further, he has suffered and will in the  
 7 future suffer pain, mental anguish, loss of well being and other such tangible losses.

8 22. By reason of the aforementioned acts and omissions of the defendants and  
 9 unseaworthiness of the vessels, plaintiff has suffered general damages in an amount  
 10 according to proof.

11 23. With respect to the foregoing, regardless of the negligence of defendants,  
 12 defendants had an absolute duty to provide a seaworthy vessel as to the items enumerated  
 13 above.

14 WHEREFORE, plaintiff prays judgment against defendants as follows:

15 1. That a warrant be issued for the arrest of the Hornblower Fleet and their  
 16 necessary appurtenances, citing all persons claiming any interest in the aforesaid vessels to  
 17 appear and answer this complaint;

18 2. That the liability of defendants be declared to be secured by a valid  
 19 subsisting maritime lien on the Hornblower Fleet and their necessary appurtenances, prior  
 20 and superior to the interest, liens and claims of all other persons or entities;

21 3. That upon a default of payment of the sums of any money judgment, the  
 22 Court decree that said vessels be condemned and sold and that all persons claiming an  
 23 interest in said vessels and their necessary appurtenances be forever barred and foreclosed

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1 from all rights of equity or redemption or claim they may have had in or to said vessels and  
2 their necessary appurtenances;

- 3 4. For general damages according to proof.  
4 5. For such special damages as shall be shown by the proof herein;  
5 6. For prejudgment interest from October 18, 2008;  
6 7. For Plaintiff's costs of suit in this case; and  
7 8. For such other and further relief as the Court may deem just.  
8

9  
10 DATED: 5 October 2011

BIRNBERG & ASSOCIATES

11  
12 By: 

Cory A. Birnberg, Esq.  
Attorneys for Plaintiff,  
JONAS ROWE

13  
14  
15  
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, JONAS ROWE, hereby demands a jury trial.

18 DATED: 5 October 2011

BIRNBERG & ASSOCIATES

19  
20 By: 

Cory A. Birnberg, Esq.  
Attorneys for Plaintiff

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